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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/643,674

08/19/2003

Suong-Hyu Hyon

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27572 7590 05/26/2009
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EXAMINER

BERMAN, SUSAN W

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

05/26/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Terminal Disclaimer

The terminal disclaimer filed on 04-28-2009 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of co-pending Application NO. 11/643673 has been reviewed and is accepted. The terminal disclaimer has been recorded. The obviousness type double patenting rejection is obviated by the terminal disclaimer.

Oath/Declaration

The Supplemental Declaration for this Reissue Patent Application is accepted. The Supplemental Declaration lists amendments filed in the prosecution of the instant application. However, the amendment filed 04-28-2009 after final rejection is not listed and a new Supplemental Declaration will be required upon entry of the amendment, The Supplemental Declaration states an error upon which reissue is based resulting from claiming less than patentee had a right to claim in the patent.

Specification

The amendment to the specification updates the continuing data.

Pre-Brief Conference Requested

Applicant requests a pre-appeal brief conference to review any outstanding rejections maintained after consideration of the Amendment after Final Rejection received 04-28-2009. A summary of the pre-appeal brief will be mailed separately.

Rejection under 35 USC 112

The rejection claims 42, 44, 86, 88, 113, 115, 130 and 132 will be moot upon entering the amendment after final rejection since the claims will then be canceled.

Rejection of claims under 35 USC 251

Applicant argues that broadening aspects of the claims are not related to subject matter given up during prosecution of the application 08/640738 which issued as Patent 6,168,626. Applicant argues that the instant claims were restricted from parent reissue application 10/141374 and are, thus, independent and distinct from the claims of application 08/640738 and Patent 6,168,626. This argument is not persuasive because the instant claims are drawn to the method prosecuted in claims 5-8 in 08/640738 and issued as claims 3-6 in Patent 6,168,626. Therefor, comments and amendments made during prosecution of the method claims in 08/640738 are considered to be relevant to the prosecution of the instant claims.

Applicant further argues that the narrowing aspects of the current claims avoid recapture of broadened aspects surrendered during prosecution of 08/640738. The narrowing aspects specifically referred to are the recitation of a “compression deformable temperature below the melting point of the UHMWPE” employed in step b of claims 40 and 84 and specified temperature ranges recited in claims 43, 53, 87, 95 and 101. Applicant argues that if these amendments had been presented in the prosecution of the original claims the amendments would have further distinguished over the cited art. This argument is not persuasive because the cited prior art of record in the prosecution of 10/640738 taught compression deformable temperature

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ranges encompassing or the same as the ranges set forth in the instant claims. For instance, Zachariades et al (4,655,769) teach compression deformation at a compression deformable temperature and specifically mention 100⁰C to 170⁰C. Kitamaru et al teach heating at a compression deformable temperature. It is the examiner's position that limiting the compression deformation temperature range to temperatures below the melting point of the UHMWPE being treated would not have further distinguished the instantly claimed method from that taught in the prior art in the absence of a showing of unexpected results obtained therefrom.

Rejections under 35 USC 102 and/or 103

Applicant argues that the combination of references amounts to impermissible hindsight based on the applicant's disclosure. Applicant refers to arguments presented in the November 20, 2007 amendment.

Applicant's arguments are unpersuasive for the following reasons. Zachariades et al disclose applicant's step b heating at compression deformable temperatures followed by cooling. The polyethylene is in a gel form. The difference from the instantly claimed method is that Zachariades et al do not teach irradiating the UHMWPE to crosslink before the heating step. Kitamaru et al teach irradiating UHMWPE to form a gel. Kitamaru et al teach stretching the irradiation crosslinked UHMWPE gel under pressure in column 3, lines 25-28. The irradiation crosslinked gel taught by Kitamaru et al would have been expected to provide a gel for use in the process taught by Zachariades et al since the process of Zachariades et al employs a gel. Kitamaru et al teach that irradiated crosslinked UHMWPE can be extended at a temperature of at least the anisotropic melting point of the crosslinked polyethylene while under pressure.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Susan W. Berman/ whose telephone number is 571 272 1067. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571 272 1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SB
5/20/2009

/Susan W Berman/
Primary Examiner
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